

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **RCRA-08-2004-0008**

IN THE MATTER OF:

Family Tree Corporation
5400 Ward Road, Bldg.2, Ste. 200
Arvada, Colorado 80002

Respondent.

**INITIAL ADMINISTRATIVE ORDER
PURSUANT TO
SECTION 7003 OF RCRA**

I. JURISDICTION

The United States Environmental Protection Agency Region 8 ("EPA") issues this Order pursuant to its authority in section 7003(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (the "Act"), 42 U.S.C. § 6973(a).

II. INTRODUCTION

- A. Family Tree Corporation ("FTC" or "Respondent"), is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. FTC has handled "solid waste" within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27) at an oil field production facility located within the external boundaries of the Wind River Reservation in the Enos Basin, NW SW Section 27, T3N R1W, SE SE Section 28, T3N R1W, SE NE, Section 28, T3N R1W, Fremont County, WY, (the "Facility").
- C. Based upon evidence received, EPA has determined that Respondent's handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973 ("Section 7003").
- D. Pursuant to Section 7003(a) of the Act, EPA notified Mr. John Wagner, Director of the Water Quality Division, Wyoming Department of Environmental Quality ("WDEQ") of this action.
- E. Documents comprising the administrative record for this Order are referred to as "AR- #." An index to the administrative record is provided as Attachment 1 to this Order.

- F. EPA takes this action pursuant to Section 7003 having determined that the issuance of this Order is necessary to protect human health and/or the environment.

III. PARTIES BOUND

- A. This Order shall apply to and be binding upon Respondent, its employees, agents, successors and assigns.
- B. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) calendar days of the date of Respondent's receipt of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order.
- C. Respondent shall give notice to EPA thirty (30) or more calendar days prior to transfer of ownership or operation of the Facility.

IV. FINDINGS OF FACT

- A. The Facility is located within the external boundaries of the Wind River Reservation¹ in the Enos Basin, T3N R1W, Sections 27 and 28, Fremont County, Fort Washakie, WY. The Facility consists of the following four Family Tree Corporation Enos Oilfield leases: WYR000202077², WYR000202069³, WYR000202051⁴, WYR000202085⁵. Oilfield lease WYR000202077 consists of a heater treater, a pump jack producing well, a tank battery and a produced water discharge evaporation pond. Oilfield lease WYR000202069 consists of a heater treater, a pump jack producing well, a tank battery and two produced water discharge evaporation ponds. Oilfield lease WYR000202051 (a/k/a the McBride lease), consists of a heater treater, a pump jack producing well, a tank battery and a small skim pit and three produced water discharge evaporation ponds. Oilfield lease WYR000202085 (a/k/a Special

¹Two of the four leases that comprise the Facility are located on State fee lands within the external boundaries of the Wind River Reservation and are therefore regulated by the State of Wyoming Oil and Gas Conservation Commission (WOGCC) and the other two leases are regulated by the Bureau of Indian Affairs.

²Also known as Tribal Allotment 795, lease # 14-20-0258-6532, Enos Tribal Well #11, the Pilot Butte Oil Field and I-96IND326D. GPS location is 43° 12'26.5" N, longitude 108° 52'23" W.

³Also known as Tribal Allotment 793, lease #14-20-0258-6533, Enos Tribal Well #7, and the Pilot Butte Oil Field. GPS location is 43° 12'26.5" N, longitude 108° 52'23" W; T3N R1W Section 28 SE NE.

⁴Also known as Way point Nos. 5 and 7, T3N R1W Section 27 NW SW.

⁵Location: T3N R1W Section 28 SE SE.

K) , consists of a mobile tank battery and two produced water discharge evaporation ponds. *See*, AR-22. *See also*, AR-2.

- B. According to the United States Fish and Wildlife Service (“FWS”), the area provides habitat to numerous grassland species of migratory birds. Species that may be present in the area include: swainson’s hawk, ferruginous hawk, golden eagle, peregrine falcon, prairie falcon, wilson’s phalarope, loggerhead shrike. These species are migratory birds of particular concern due to documented or apparent population decline; small population or limited distribution; or dependence on vulnerable or restricted habitats. The bald eagle, found throughout the State of Wyoming, is a threatened species; the mountain plover, found in grasslands and prairie dog towns, is proposed for listing as a threatened species pursuant to the Endangered Species Act of 1973, as amended. In addition, waterfowl, shorebirds and other aquatic birds such as dabbling ducks, American avocets and eared grebes migrate through the area. *See*, AR-23.
- C. In late 1996, EPA Region 8, and FWS Region 6 formed a partnership (“EPA/FWS Team”) to explore methods to comprehensively address threats to human health and/or the environment posed by improperly designed and/or operated facilities that manage oil and gas exploration and production wastes (“E&P waste”).
- D. The FWS focus in this team effort is to implement the Migratory Bird Treaty Act, and the Endangered Species Act.
- E. The EPA focus is to ensure that all owners and operators of facilities managing E&P waste do so in compliance with all laws EPA has responsibility for implementing, and in a manner that is protective of human health and/or the environment.
- F. On June 24, 1997, representatives from EPA, FWS, Bureau of Indian Affairs (BIA), and the Department of the Interior (DOI), Bureau of Land Management (BLM) conducted an inspection at the Facility prior to FTC purchasing the Facility⁶, and observed that the McBride fee site evaporation pond one had a very thick “black goo” present throughout the pond; two bird mortalities were recovered; and no exclusionary devices such as, flagging or netting were present to deter wildlife access. *See*, AR-1.
- G. On August 1, 1997, FTC, BLM, and BIA, entered into an environmental agreement regarding Allotments 793 and 795, or the Enos Tribal wells nos. 7 and 11. This agreement required FTC to line the homestead pit at well no. 11, remove the well pot sludge at well no. 7 and line the pit, and net or flag existing production pits. *See*, AR-26.
- H. During a Facility inspection by EPA and FWS on October 20, 1999, the inspectors observed that the McBride fee well #5 oil lease evaporation pond 1 was 100 percent covered with oil

⁶*See*, AR-1. *See also*, AR-25 and AR-26, for documents evidencing FTC ownership of the four oil leases prior to October, 1999.

and twelve bird mortalities were retrieved. Additionally, one bird mortality was found in the McBride fee well #5 oil lease evaporation pond 2. *See*, AR-3, AR-4, and AR-8.

- I. In a letter dated December 2, 1999, Larry Allen, WOGCC, wrote to Robert Dykes, FTC, referring to the December 1, 1999 WOGCC inspection of the McBride Fee Battery and requested that FTC install a fence around the two ponds, install a boom across the SW corner of pond 1, install flagging on the ponds, stockpile all oil-contaminated soil in one location, maintain the ponds free from oil, and keep netting and flagging in place. *See*, AR-5.
- J. On December 9, 1999, Special Agent Roy Brown, FWS, conducted a site visit at the McBride fee site at the request of Pedro Ramirez, FWS, acting on a citizen tip that an oil spill had occurred and been covered up with soil at the site. Agent Brown observed that some new flagging had been placed over the evaporation ponds, but there was still oil present on the ponds. Agent Brown recovered one songbird mortality that had been removed from the pond and tossed in the sagebrush. *See*, AR-6 and AR-10.
- K. On December 17, 1999, Agent Brown, FWS, made a second visit to the site and found that no oil had been removed from the evaporation ponds. *See*, AR-10.
- L. In a letter dated December 17, 1999, Field Supervisor, Michael Long, FWS, informed Mr. Allen, WOGCC, of the fourteen bird mortalities found at the McBride fee site. *See*, AR-7.
- M. FTC received a letter dated January 10, 2000, from Special Agent Roy Brown, FWS, notifying FTC that fourteen bird mortalities were found at the McBride fee site in violation of the Migratory Bird Treaty Act, 16 United States Code § 703. This letter informed FTC that a Notice of Violation would be sent within sixty days and any penalty would be reduced by two-thirds if FTC notified FWS of any measures it took to clean up the site and exclude migratory birds from access to the evaporation ponds. *See*, AR-9 and AR-10.
- N. On March 28, 2000, BLM visited the McBride fee site and issued a Notice of Incidents of Non Compliance with 43 CFR § 3162.7-1 for the oil on the evaporation pond at the Enos Tribal well #7. *See*, AR-11.
- O. On April 13, 2000, Special Agent Roy Brown, FWS, revisited the McBride fee site and observed that a barbed wire fence had been placed around the lower end of the three evaporation ponds. Mr. Brown spoke with Mickey Miller, a field hand for FTC, who stated he had removed the contaminated dirt, arranged for its transport to a hazardous waste Facility, and attempted to skim the pits but four trucks had broken down. *See*, AR-12.
- P. In a letter dated April 14, 2000, Roy Brown, FWS, informed Robert Dykes, FTC, that FWS would reduce the amount of the fine by two-thirds and enclosed a Notice of Violation for the taking of fourteen birds. Mr. Brown noted that no one from FTC had attempted to contact him regarding compliance efforts as requested by his January 10, 2000 letter. *See*, AR-13 and AR-15.

Q. On April 25, 2000, BLM issued a second Notice of Incidents of Non Compliance and penalty to FTC for failure to remove the oil on the evaporation pond at the Enos Tribal well #7 within the time frames stated in the March 28, 2000 Notice of Incidents of Non Compliance. *See*, AR-14.

R. On May 6, 2003, Pedro Ramirez, FWS, and Randy Lamdin, EPA, (the Inspectors) inspected all four sites at the Facility and found the following:

Enos Well #11: The one produced water discharge evaporation pond was lined and had marginal flagging deployed; the pond was approximately 75% oil-covered with a thick, asphalt-like oil; non-existent secondary containment around the heater treater, and inadequate secondary containment around the tank battery. Mr. Miller, FTC's representative indicated that the oil on the pond would be removed shortly.

Enos Well #7: This site has two produced water discharge evaporation ponds. The upper pond was lined, had marginal flagging deployed in a rectangular configuration, and was 40%-50% covered by an oily sheen. The lower pond was unlined, had no flagging, and appeared to be oil-free.

McBride Well #5: This site has a small skim pit and three produced water discharge evaporation ponds, all of which have wire fences and are surrounded by a variety of dry scrub vegetation. The small skim pit was 100% oil-covered but had a wire mesh over it to prevent any threat to wildlife. The upper or south pond, the middle pond, and the lower or north pond were unlined; had several strands of flagging deployed; but had inadequate freeboard all along the ponds' shorelines. The middle pond was approximately 30%-40% covered by an oily rainbow sheen and the lower or north pond was approximately 25% oil-covered. One bird mortality was recovered from the north pond.

Special K1: This site appeared to be temporary in that it had two produced water discharge evaporation ponds and a mobile tank battery. Both the western and eastern ponds were lined and the western pond had several strands of flagging deployed in a criss-cross configuration. The western pond was approximately 15% oil-covered and the eastern pond was approximately 5% oil-covered. The mobile tank battery did not have secondary containment.

See, AR-16, and AR-17A through AR-17E.

S. On February 25, 2004, EPA contacted the Northern Arapaho Tribe, the Eastern Shoshone Tribe, and the Wyoming Oil and Gas Conservation Commission to notify them of this

proposed enforcement action at the FTC Facility and to ascertain additional information for consideration. *See*, AR-20A, 20B, and 20C.

- T. On May 26, 2004, Pedro Ramirez, FWS, and Randy Lamdin, EPA, conducted an inspection at all four sites at the Facility. The Inspectors noted that the thick asphalt-like oil on the evaporation pond at Enos Well # 11 covered the entire pond and had not been removed as represented by Mr. Miller during the May 6, 2003 inspection. The upper pond at Enos well #7 had not changed within the year and the lower pond was now dry. The skim pit at the McBride well #5 remained unchanged; the south pond's shoreline had a very oily residue and appeared to be 40%-50% oil-covered; the middle pond had a moderately oily residue on the shoreline and the pond was approximately 20% oil-covered; and the north pond appeared free from oil. One bird mortality was recovered from the north pond. The eastern pond at the Special K1 site was dry and the western pond showed no oil on the surface. *See*, AR-21 and 22.
- U. On August 5, 2004, Philbert McLeod, BLM, informed EPA that BLM was in the process of issuing another Notice of Non-compliance to FTC for the oil on the pond at Enos Well #7. *See*, AR-24.

V. CONCLUSIONS OF LAW

- A. Respondent is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. Wastes received by, and handled at, the Facility are "solid waste[s]" as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).
- C. Respondent has contributed and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
- D. Respondent's handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act.

VI. ORDER

Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect human health and/or the environment. EPA, therefore, hereby orders Respondent to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

VII. WORK TO BE PERFORMED

A. CORRECTIVE MEASURES

1. Within ten (10) calendar days of receipt of this Order, Respondent shall evaluate all corrective measures necessary at the Facility to protect wildlife (including migratory birds and endangered species), develop a Corrective Measures Work Plan (CMWP) and submit such CMWP to EPA for approval. The CMWP shall describe:
 - a. the selected corrective measures, including but not limited to the corrective measures described below in Paragraph A. 2. of this section;
 - b. an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures; and
 - c. the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CMWP shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.
2. The corrective measures shall include at a minimum, but not be limited to:
 - a. methods for permanently and continuously eliminating contact by wildlife with any oil at or on the surface of the evaporation ponds and throughout the Facility, which may include remediation of shorelines, and regular and effective skimming of the ponds to address floating oil sheens, thick, semi-crusted oily wastes, oily drilling mud, etc;
 - b. remediation of oily shorelines and other ground surfaces; and
 - c. cleaning up and properly disposing of any oil-stained/oil-contaminated soils and other wastes generated at the Facility.
3. The CMWP shall specify that the corrective measures set forth in Section VII. A. 2. a.-c., above, shall be implemented within ten (10) calendar days of EPA approval of the CMWP.
4. EPA will notify Respondent in writing of any comments it may have on the CMWP which must be incorporated into the CMWP before it can be approved.
5. Respondent shall incorporate EPA's comments into the CMWP and resubmit the CMWP to EPA within five (5) calendar days of receipt of EPA's comments.
6. Upon receipt of Respondent's CMWP with EPA comments incorporated, EPA will notify Respondent in writing of its approval, approval with modifications or

disapproval of the CMWP. If approved with modifications, the EPA notification correspondence will serve as an addendum to the final CMWP.

7. Upon receipt of EPA's written approval or approval with modifications, Respondent shall implement the corrective measures in accordance with the procedures and schedules contained in the CMWP as approved by EPA.
8. Within fifteen (15) calendar days of completing the work as set forth in the CMWP as approved by EPA, Respondent shall provide a written Corrective Measures Summary Report to EPA detailing, and confirming through photographic evidence, the completion of the activities conducted pursuant to the CMWP. The Corrective Measures Summary Report and photographs shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented.

B. EMERGENCY ACTION

1. In the event Respondent identifies a threat to human health and/or the environment at the Facility at any time during implementation of this Order which warrants more immediate action than pursuant to any requirement of this Order, Respondent shall orally notify the EPA Project Manager identified below not more than twenty-four (24) hours after discovery and notify EPA, FWS, and WDEQ in writing not more than ten (10) days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s). Threats to the environment shall include the discovery of any mortality of any animal subject to the Endangered Species Act or the Migratory Bird Act at the Facility.
2. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or Section 304 of the Emergency Planning and Community Right to Know Act (EPCRA), as amended.
3. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
4. If EPA, FWS, or WDEQ identifies such a threat(s) at the Facility at any time during implementation of this Order, EPA will notify Respondent orally, and provide subsequent notification in writing. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
5. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless

EPA does not provide to Respondent in writing, a description of such requirements within ten (10) calendar days of oral notification.

C. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondent of such additional requirements in writing, and Respondent shall conduct such work according to EPA direction.

D. PUBLIC PARTICIPATION

EPA may make any work plan or other document available to the public for review and comment for an appropriate period prior to taking final action on such document.

E. REPORTING

1. Respondent shall provide EPA, FWS, and WDEQ with quarterly progress reports for which shall include, at a minimum, the following information:
 - a. activities conducted at the Facility in the previous quarter;
 - b. summaries of problems encountered during the previous quarter and how the problems were or are being addressed;
 - c. changes in work performed at the Facility from that projected in the previous quarter progress report; and
 - d. projected work for the next reporting period.
2. The quarterly reports shall cover the following time frames : January-March, April-June, July-September, and October-December, and be due to EPA, FWS, and WDEQ, by the fifth calendar day of April, July, October, and January for the duration of this Order.

F. CERTIFICATION

1. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of FTC. A person is a "duly authorized representative" only if: (1) the authorization is made in writing; (2) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or activity (a duly authorized representative may thus be either a

named individual or any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Manager designated below.

2. The certification shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete. As to [the/those identified portion(s)] of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature :

Name :

Title :

VIII. ACCESS

Respondent shall permit full access to EPA, FWS, BLM, BIA, WDEQ, WOGCC, and the County, and their authorized representatives, as may be necessary for the purposes of oversight of and implementation of this Order. Access shall occur at reasonable times in accordance with Section 3007 of the Act, 42 U.S.C. § 6927 ("Section 3007"). This section of the Order shall not be construed in any way to limit the authority of EPA, FWS, BLM, BIA, WDEQ, WOGCC, or the County.

IX. GENERAL PROVISIONS

- A. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.
- B. Respondent shall obtain any permits or approvals which are necessary to perform work on or outside the Facility under applicable law and shall submit timely applications and requests for any such permits and approvals.

- C. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Order.

X. AVAILABILITY AND RETENTION OF INFORMATION

- A. Respondent shall make available to EPA, and shall retain, during the pendency of this Order and for a period of five (5) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.
- B. After the document retention period, Respondent shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and, upon request by EPA, shall deliver the documents to EPA.

XI. CONFIDENTIALITY CLAIMS

Respondent may assert confidentiality claims pursuant to 40 CFR Part 2. Information determined to be confidential by EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondent.

XII. AVAILABILITY OF ADMINISTRATIVE RECORD

The administrative record supporting this Order shall be available for public review at the RCRA File Room, EPA Region 8, 999 18th Street, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

XIII. NOTICES, CONTACTS, AND EPA PROJECT MANAGER

Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for EPA for this Order.

As to EPA:

Mr. Randy Lamdin
EPA Region VIII, 8ENF-RC
999 18th Street, Suite 300
Denver, Colorado 80202-2466
(303) 312-6350

As to FWS:

Mr. Pedro Ramirez, Jr.,
Ecological Services, Wyoming Field Office
U.S. Fish & Wildlife Service
4 000 Airport Blvd.
Cheyenne, WY 82001
(307) 772-2374 ext. 36

As to WDEQ:

Mr. John Wagner, Administrator
Water Quality Division
Wyoming Department of Environmental Quality
Herschler Building, 4th Floor
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7781

If the date for submission of any item or notification required by this Order falls upon a weekend or state or Federal holiday, the time period for submission of that item or notification is extended to the next Federal working day following the weekend or holiday.

XIV. RESERVATION OF RIGHTS

- A. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary.
- B. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.
- C. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.
- D. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable State, Federal, or other law, regulation, permit, or other requirement.

XV. FAILURE TO COMPLY

Pursuant to Section 7003(b) of the Act and 40 CFR Part 19, any failure by Respondents to comply with this Order shall subject Respondents to civil penalties of not more than \$6,500.00 for each day of each failure to comply with this Order.

XVI. OPPORTUNITY TO CONFER, AND MODIFICATION

- A. Respondent has the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If Respondent desires a conference, Respondent must contact EPA Region 8 by telephone to schedule such a conference within five (5) calendar days

of receipt of this Order by Respondent and follow up this request in writing immediately thereafter.

- B. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.
- C. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondents.
- D. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XVII. NOTICE OF INTENT TO COMPLY

- A. Respondent shall provide, within two (2) days from receipt of this Order, or within twenty-four (24) hours from the date Respondent confers with EPA pursuant to this section of the Order, written notice to Mr. Randy Lamdin, at the address set forth above, stating whether Respondent will comply with the terms of this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondents may make in its notice, and shall not affect Respondent's obligation to implement this order.
- B. Failure of Respondent to provide notification to EPA's Project Manager of intent to comply within this time period is a violation of this Order.

XVIII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XIX. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force.

XX. EFFECTIVE DATES

- A. This Order shall become effective on the date it is filed with the Regional Hearing Clerk.
- B. Modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

XXI. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's continuing obligations hereunder, including, but not limited to: record retention, reservations of rights, other claims, other applicable laws, and notice of non-liability of EPA.

IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 9-27-04

By: SIGNED
Sharon L. Kercher, Director
Technical Enforcement Program

Date: 9/23/04

By: Michael T. Risner for/
David J. Janik
Senior Supervisory Attorney

Administrative Record Index

to

In The Matter of: Family Tree Corporation (FTC)

Docket No.:

- AR-1 June 24, 1997 Multi-agency Inspection Report regarding Site Identification number #302 with enclosed pictures. Report notes that no exclusionary devices were present, two bird mortalities were found; and a very thick "black goo" was present throughout the pit. Additionally, report notes that Family Tree Corporation (FTC) will be purchasing the lease and is working on an environmental agreement with Bureau of Indian Affairs (BIA).
- AR-2 United States Department of the Interior Geological Survey Map showing the Enos Basin and oil tanks.
- AR-3 Field Notes written by Pedro Ramirez, U.S. Fish and Wildlife Service (FWS) regarding Facility inspection on October 20, 1999. Report shows that at Way point no. 5, twelve bird mortalities were found in pond 1, and one bird mortality was found in pond 2. Pictures show bird mortalities and oil on ponds.
- AR-4 Email dated November 9, 1999, from Pedro Ramirez, FWS, to Gary Strong, WOGCC, transmitting pictures of the October 20,99 inspection and noting the thirteen bird mortalities and the 100% oil-covered condition of way point No. 7.
- AR-5 Letter from Larry Allen, WOGCC, to Robert Dykes, FTC, dated December 2, 1999, referring to a December 1, 1999 WOGCC inspection and requesting installation of a fence and a boom, stockpiling contaminated soil, installation of flagging, and maintenance of the pits so that they are free from oil.
- AR-6 Email dated December 3, 1999, from Pedro Ramirez, FWS, to Roy Brown, Special Agent, FWS, informing Mr. Brown of an oil spill and requesting a site visit to determine if there are bird mortalities. Notes dated December 9, 1999, from Roy Brown, FWS, state that he observed one bird mortality, no installation of netting, but new flagging had been installed.
- AR-7 Letter from Michael Long, FWS, to Larry Allen, WOGCC, acknowledging receipt of copy of WOGCC December 2, 1999 letter to Mr. Dykes and advising Mr. Allen that flagging is not a sufficient deterrent to prevent migratory bird mortality and providing research noting that properly installed netting seemed to be the most effective deterrent.
- AR-8 Letter from Pedro Ramirez, FWS, to Roy Brown, FWS, dated January 7, 2000, transmitting the digital images taken at the FTC Facility on October 20, 1999.

- AR-9 January 10, 2000 letter from Roy Brown, FWS, to Mr. Dykes, FTC, notifying Mr. Dykes of the federal violations of the Migratory Bird Treaty Act resulting from the 13 bird mortalities found during the October, 1999 inspection and the one bird mortality found during the December, 1999 site inspection, and the potential fine of \$3500 if additional corrective clean up measures are not taken. Mr. Brown indicated that a Notice of Violation would be sent within 60 days and corrective measures needed to be taken in that time frame.
- AR-10 January 6, 2000 Report of Investigation made by Special Agent Roy Brown, FWS, (Case No. 610000019) regarding the illegal taking of fourteen migratory birds by the FTC.
- AR-11 March 28, 2000 Notice of Incidents of Noncompliance issued by the United States Department of the Interior, Bureau of Land Management (BLM) to FTC for violation of 43 CFR 3162.7-1 for oil in pit at Well #7. Notice required removal of oil by April 15, 2000.
- AR-12 April 13, 2000 Report of Investigation (Case no. 610000019) documenting the FWS follow up site inspection done on April 13, 2000. Agent Brown, FWS, spoke with Mickey Miller, a field hand for FTC, who informed him that fencing had been installed, contaminated dirt had been stockpiled and readied for transport to a hazardous waste Facility, and they were trying to skim the pits but were having mechanical problems with four trucks.
- AR-13 April 14, 2000 letter from Agent Brown, FWS, to Mr. Dykes, FTC, informing Mr. Dykes that the initial penalty of \$3500 would be reduced to \$1167 based on the company's improvements and attempts to keep migratory birds out of the pits.
- AR-14 April 25, 2000 second Notice of Incidents of Noncompliance issued by BLM to FTC for failure to abate the violation of 43CFR 3162.7-1 for oil in pit at Well #7 and assessing a \$250 assessment pursuant to 43 CFR 3163.1(a)(2). Notice required corrective action by May 17, 2000. Handwritten notation on this Notice reflects a payment made by FTC on May 13, 2000.
- AR-15 FWS United States District Court Violation Notice No. 394056 issued to Robert Dykes, FTC, assessing a penalty of \$1167 for the illegal taking of fourteen migratory birds on October 20, 1999, in violation of 16 U.S.C. section 703; and the Central Violations Bureau Agency Closed Index reflecting payment by Mr. Dykes on May 12, 2000.
- AR-16 FWS Field Inspection Report for the Family Tree Facility dated May 6, 2003, prepared by Pedro Ramirez. Mr. Ramirez notes that the site is unchanged from

- AR-17A EPA Inspection Report dated July 23, 2004, regarding the inspection that occurred on May 6, 2004, at the FTC Facility.
- AR-17B EPA Inspection Report dated July 23, 2004, regarding the inspection that occurred on May 6, 2004, at the FTC Facility- Oilfield lease WYR000202077.
- AR-17C EPA Inspection Report dated July 23, 2004, regarding the inspection that occurred on May 6, 2004, at the FTC Facility- Oilfield lease WYR000202069.
- AR-17D EPA Inspection Report dated July 23, 2004, regarding the inspection that occurred on May 6, 2004, at the FTC Facility- Oilfield lease WYR000202051.
- AR-17E EPA Inspection Report dated July 23, 2004, regarding the inspection that occurred on May 6, 2004, at the FTC Facility- Oilfield lease WYR000202085.
- AR-18 July 19, 2004 email from Dominic Domenici, FWS, releasing FWS Report of Investigation #610000019 to Brenda Morris, EPA, for inclusion in the RCRA 7003 Administrative Record for FTC.
- AR-19 August 18, 2003 cover letter from Pedro Ramirez, FWS, to Randy Lamdin, EPA, transmitting photos and field notes regarding FTC. For attachments to this email, see AR-3.
- AR-20A EPA Letter dated February 25, 2004, regarding Notification of Proposed enforcement action at the FTC (Enos Oilfield) Facility sent to Mr. Burton Hutchinson, Sr., Chairman Northern Arapaho Tribe.
- AR-20B EPA Letter dated February 25, 2004, regarding Notification of Proposed enforcement action at the FTC (Enos Oilfield) Facility sent to Mr. Vernon Hill, Chairman Eastern Shoshone Tribe.
- AR-20C EPA Letter dated February 25, 2004, regarding Notification of Proposed enforcement action at the FTC (Enos Oilfield) Facility sent to Mr. Don Likwartz, Supervisor WOGCC.
- AR-21 FWS Field Inspection Report for the Family Tree Facility dated May 26, 2004, prepared by Pedro Ramirez.
- AR-22 EPA Inspection Report dated June 7, 2004, regarding the inspection that occurred on May 26, 2004, at the FTC Facility. Inspection revealed WYR000202077 was 100% oil-covered; WYR000202069 was 30% to 40% oil-covered; WYR000202051, consisting of three pits showed the small skim pit was 100% oil-covered, the upper pit was 40%-50% oil-covered and had an oily residue shoreline, and the middle pit had one old bird mortality but was not oil-covered; and WYR000202085, consisting of two pits showed that one pit was dry and one pit had no oil coverage.

- AR-23 June 28, 2004 email from Pedro Ramirez, FWS, to Randy Lamdin, EPA, and Brenda Morris, EPA, transmitting migratory bird species of concern in Fremont County, Wyoming.
- AR-24 Letter dated August 5, 2004, to Brenda Morris, EPA, from Philbert McLeod, BLM, Lander Field Office.
- AR-25 Facsimile from WOGCC to Brenda Morris, EPA, transmitting ownership forms for the McBride lease, a drilling permit for the Special K lease, and a change of operator form for Tribal Enos well #11.
- AR-26 Facsimile from Floyd Phillips, BIA, to Brenda Morris, EPA, transmitting the Environmental Agreement for the Pilot Butte Oil Field Allotment 793 and 795 and the BIA Oil and Gas Mineral Lease - Trust Lands dated March 28 1997, regarding the mineral owners of allotment 0795.

CERTIFICATE OF SERVICE

I hereby certify that the original and a true copy of this Initial Administrative Order was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via US Mail to:

Family Tree Corporation
5400 Ward road, Building 2, Suite 200
Arvada, CO 80002

Dated: September 28, 2004

By: **SIGNED**
Judith McTernan

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
SEPTEMBER 28, 2004.**
